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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MARK S. HOLMES, Plaintiff and Appellant, v. COUNTY OF SAN MATEO, ET AL., Defendants and Respondents.	A149873 (San Mateo County Super. Ct. No. CIV493925, CIV509711)

Mark S. Holmes appeals from a judgment affirming a decision of the San Mateo County Assessment Appeals Board (AAB), which allocated the assessed value of his real property to $2.4 million for land and $200,000 for improvements. He contends the method for allocating the assessed value was arbitrary, capricious, and unconstitutional, because the allocation ratio it yielded for his property was different than the average allocation ratio for properties in other cities in San Mateo County, and because of the disparity in allocation ratios among those cities. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

In May 2007, Holmes purchased property consisting of 2.73 acres of land and a single-family home in Portola Valley for $2.6 million. The property included 2,182 square feet of improvements when purchased, and is allotted up to 7,200–7,650 square feet for all structures.

The Assessor determined the assessed value of the property to be $2.6 million based on the purchase price. The Assessor then allocated $2.5 million of that amount to

land and $100,000 to improvements. In reaching this allocation, the Assessor first examined comparable sales of property, including vacant land sales and sales where the improvements had been demolished. (See Cal. Code Regs., tit. 18, § 4 (Property Tax Rule 4).) The Assessor then subtracted the comparable land value from the property's purchase price and allocated the remainder to the property's improvements. In so doing, the assessor valued the improvements as a "teardown," based on his view that properties in the area were purchased primarily for land value, and improvements on comparable properties had been demolished, as well as the fact that Holmes's property was marketed with a statement that " 'Town says can build new more than 6000 sf.' " The Assessor also performed a depreciated cost analysis on the improvements, but did not rely primarily on that method. (See Cal. Code Regs., tit. 18, § 6 (Property Tax Rule 6).)

Holmes filed an assessment appeal in August 2008. In his appeal – as in this litigation – Holmes did not contest the $2.6 million valuation of the property, but challenged the Assessor's allocation of that amount between land and improvements.

In his briefing to the AAB, Holmes maintained that the proper way to value his property was through the comparable sales method. At the AAB hearing, Holmes's expert, Roger Miller, provided a report using the comparable sales and cost methods with specified adjustments. Miller opined that Holmes's property value should have been allocated $2.2 million to land and $400,000 to improvements.

Holmes, however, contradicted his expert and insisted the allocation should be $1.5 million to land and $1.1 million to improvements, based on a study he commissioned of the ratios of land to improvements in the county. He argued that his property should be allocated roughly equally between land and improvements because other properties averaged that allocation ratio; to do otherwise, he claimed, would violate his constitutional right to equal protection.

In its written findings of fact, the AAB rejected Holmes's analysis because it ignored any differences in the properties that the market generally considered, such as lot size, location, density and view, and it attempted to draw parallels between allocation ratios in Portola Valley with those in different housing markets such as Daly City and

San Bruno. The AAB further noted that Holmes's argument regarding the countywide ratio analysis was contradicted by his expert. The AAB therefore agreed with the Assessor that the property should be viewed as a teardown, but was nevertheless persuaded that the Assessor had not accounted for the full value of the improvements. After reviewing all the information submitted, the AAB determined that the proper allocation should be $2.4 million to land and $200,000 to improvements.

Holmes filed a petition in the superior court for a writ of mandate, seeking to overturn the AAB's decision. He also filed a separate lawsuit alleging a violation of constitutional rights and a violation of the tax code based on the facts cited in the writ petition. The petition proceedings and lawsuit were consolidated.

After briefing and argument by the parties, the court entered judgment in favor of the county in August 2016. The court found there was substantial evidence to support the allocation between land and improvements through the comparable sales method used by the Assessor and approved by the AAB, and the allocation method did not violate Holmes's constitutional rights.

This appeal followed.

II. DISCUSSION

Holmes does not dispute that the total value of the property was properly assessed at 2.6 million, and that this amount – not the allocation between land and improvements – determined his tax bill for the relevant year. As a threshold matter, he raises the issue of whether he is at all harmed by the AAB's decision.

Holmes's arguments in this regard are unpersuasive. He claims he is harmed because he is being treated differently than other property owners, but as discussed *post*, there is no evidence the Assessor treated him any differently than similarly situated property owners. He argues he might have to rebuild if a catastrophe demolishes the existing improvements, which could trigger a reassessment that retains the high land value and adds the substantial costs of rebuilding, resulting in a higher total assessed value for taxation purposes. However, he does not dispute respondent's argument that the tax code exempts properties from reassessment in those circumstances. (See 58D

West's Ann. Rev. & Tax. Code (2009 ed.) § 70, subd. (c), p. 127; 58D West's Ann. Rev. & Tax. Code (2009 ed.) § 74.7, p. 147; 59 West's Ann. Rev. & Tax. Code (2009 ed.) § 170, p. 106.) He also claims that his insurer might take the position that his improvements were worth no more than their assessed value – as opposed to the $830,000 for which he insured them – but he admits such evidence was not before the trial court and he provides no citation to the record.

Nonetheless, we conclude that Holmes does face adverse consequences from the AAB's decision that his current improvements should be valued at only $200,000. If he *voluntarily* tears down the existing improvements and builds more valuable improvements, the property will likely be reassessed, and he may experience a larger increase in his taxes than he would if the existing improvements had been given a higher valuation. While Holmes does not disclose any thought of rebuilding, the fact that the AAB considered his property a "teardown" substantiates that potential. Accordingly, Holmes is aggrieved by the decision below, and we may proceed to the merits.

A. Constitutionality of the Valuation Method

Holmes contends the county's methods of allocating property value between land and improvements are arbitrary and unconstitutional, because the evidence shows that the ratio between land and improvements for Holmes's property is different than it is for the average property owner in other cities. His argument is meritless.

1. Law

Where a taxpayer challenges the validity of the valuation method, the court must determine "whether the challenged method of valuation is arbitrary, in excess of discretion, or in violation of the standards prescribed by law." (*Bret Harte Inn, Inc. v. City and County of San Francisco* (1976) 16 Cal.3d 14, 23 (*Bret Harte*); *Maples v. Kern County Assessment Appeals Board* (2002) 96 Cal.App.4th 1007, 1013 (*Maples*).) We review the validity of a valuation method de novo. (*Bret Harte Inn,* at p. 23; *Maples,* at p. 1013.)

As a fundamental precept, all property subject to taxation must be assessed at its "full cash value." (Cal. Const. art. XIII, § 1; 59 West's Ann. Rev. & Tax. Code (2009

ed.) § 110, subd. (a), p. 51; Cal. Code Regs., tit. 18, § 2 (Property Tax Rule 2).) As further set forth in Property Tax Rule 3, the assessor must estimate full cash value by considering one or more enumerated approaches to valuation, including the comparative sales approach – using the prices at which the property and comparable properties have recently sold – and the replacement cost approach. (Under Property Tax Rule 2, the purchase price is rebuttably presumed to be the initial assessed value.) Property Tax Rule 4 addresses the comparative sales approach, while Property Tax Rule 6 addresses the replacement cost approach. In addition, the property's total value must be allocated between land and improvements. (59A West's Ann. Rev. & Tax. Code (1998 ed.) § 607 p. 152.)

Because of the mandate that property be assessed at *its* full cash value, the assessment method must value the specific property being assessed. (See *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546.) Thus, it would be arbitrary and unconstitutional to apply a uniform adjustment to all properties, regardless of the individual property's age or condition. (*Bret Harte Inn, supra,* 16 Cal.3d at p. 23 [assessor's discounting original acquisition cost by a uniform depreciation factor, regardless of the property's age or condition, was arbitrary and in violation of constitutional and statutory requirements that all property subject to taxation be assessed at its full cash value]; *Mahoney v. City of San Diego* (1926) 198 Cal. 388, 401 [assessor's valuation of all improvements at a percentage of their construction costs without regard to location, age of building, state of repair, or productive use ignored constitutional mandate to value property at full cash value].)

2. Respondents' Valuation Method was Lawful

The Assessor and the AAB arrived at their allocations between land and improvements using the comparable sales approach (Property Tax Rule 4), along with the cost method (Property Tax Rule 6). Specifically, the Assessor looked at land sales for property similar to Holmes's to determine the per square foot value of land in the area, subtracted this market value of the land from the purchase price, and allocated the remainder to improvements. To support this allocation, the Assessor determined the

value of the improvements using the cost method. The Assessor and AAB therefore employed valuation methods explicitly accepted by the Property Tax Rules, allocating between land and improvements based on specific attributes of Holmes's property. There was nothing arbitrary, capricious, or unconstitutional about the valuation methodology.

3. Holmes's Arguments are Meritless

Holmes's several arguments to the contrary have no merit.

a. "Tear Down" Argument

Holmes claims the Assessor's valuation method was improper because the Assessor based his assessment on the theory that the property was a "tear down," which is not a methodology recognized in the Property Tax Rules.

"Tear down," however, is not a valuation method. The valuation methods used for Holmes's property were the comparable sales approach and cost approach authorized by Property Tax Rules 3, 4 and 6. The Assessor and AAB's reference to a "tear down" reflected the conclusion that buyers of property in the area primarily purchase it for the land value and tend to demolish older structures and replace them. This factual conclusion may have guided the Assessor in deciding which methodology to use, but it was not the valuation method itself. (And, as discussed *post*, Holmes does not establish that adopting the tear down assumption was unsupported by the facts or inappropriate in this case.)

b. Difference Between Holmes's Ratio and Others' Ratios

Referring to the Assessor's allocation of 96 percent to land and 4 percent to improvements (and the AAB's allocation of 92 percent to land and 8 percent to improvements), Holmes contends "[t]he problem with this result is that there are virtually no other single family residential properties located within San Mateo County with such a lopsided and unfounded land-versus-improvements allocation." (Italics omitted.) He points to evidence that properties in other cities within San Mateo County (such as Daly City and San Bruno) on average experience an allocation of roughly 50 percent land and 50 percent improvements. He contends the valuation method must therefore be arbitrary and capricious.

To the extent Holmes is arguing that the county's valuation methodology is flawed because it resulted in an allocation in his case that is vastly different from the allocation experienced by property owners in other cities, his argument is obviously amiss. First, as the AAB found, his "[attempt] to draw parallels between the value allocation for properties sold in Portola Valley with those sold in Daly City, San Bruno and other cities within the County. The Board found this contention is unpersuasive insofar as such areas present qualitatively different housing markets." Second, as the AAB found, Holmes's focus on *average* ratios in other cities discloses nothing about the treatment of specific properties that are actually similar to Holmes's property.

To the extent Holmes is arguing (as respondent interprets it) that the same or similar ratio between land and improvements should be used throughout the county, he urges an unconstitutional approach. No "ratio analysis" valuation method is recognized by the Revenue & Taxation Code or the Property Tax Rules. Indeed, applying the same ratio to all properties in San Mateo County would not consider lot size, location, view, acquisition date, age of improvements or other market attributes of the property, and would therefore directly contravene the mandate that valuation "achieve a reasonable estimate of the true present value of the property" based on the circumstances of the specific property. (E.g., *Bret Harte Inn*, *supra*, 16 Cal.3rd at p. 27.)

c. Disparity in Ratios Among Different Cities

Taking a different tactic, Holmes contends that his statistical evidence showed wide disparities in allocations depending on the city, from Atherton (17 percent allocated to improvements), Woodside (22 percent), and Portola Valley (25 percent), to Daly City, Pacifica and South San Francisco (52 percent each). He argues that this disparity shows the allocations are not predicated on an individualized basis or according to the age or depreciation of the improvements, but "are dependent solely upon the city or unincorporated area within which a given subject property is located."

Holmes's argument is meritless. In the first place, the disparity between cities does not show, as he claims, that allocations are *solely* dependent on the site of the property or are not made on an individualized basis. While it does suggest that the

allocation ratio reflects the property's location, that is merely a function of the proper application of a consistent methodology. After all, the ratio is obviously going to be different depending on the overall price and value of the property, which often turns on location: a $200,000 house in one city will represent a lower percentage of the total property value if the land portion is more valuable due to the attractiveness or popularity of its locale. Simply put, the disparity in allocation ratios from city to city is not due to arbitrariness, but due to the location of the individual properties.

d. Equal Protection

Lastly, Holmes argues that his equal protection rights were violated because only about 8 percent of his property value was allocated to improvements, while around 50 percent of the property value of property owners in other cities was allocated to improvements.

"[T]he threshold for tax legislation to pass constitutional muster against an equal protection challenge is very low. 'The party who challenges the constitutionality of a classification in a tax statute bears a very heavy burden; it must negate any conceivable basis [that] might support the classification.' [Citation.] 'If the challenged classification is based on natural, intrinsic or fundamental distinctions that are reasonable in their relation to the object of the legislation, then it will be deemed to be valid and binding.' " (*Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135, 149 (*Borikas*).)

Here, Holmes fails to establish that persons similarly situated to him are treated differently in the manner in which their property values are allocated. There is no evidence, for example, that the properties of other purchasers are valued using something other than the comparable sales and cost methods. Nor is there evidence that other properties similar to Holmes's in size, age, construction, and other market attributes were allocated differently.

Furthermore, even if he could establish disparate treatment, he fails to establish a lack of any rational basis for it. (See *Nordlinger v. Hahn* (1992) 505 U.S. 1, 10–11; *City and County of San Francisco v. Flying Dutchman Park, Inc*. (2004) 122 Cal.App.4th 74, 83.) He contends merely that, given the difference between the allocation in his case

with the average allocation in other cases, "it is difficult to see the tenability of Respondents' argument." It is his burden to show unconstitutionality. (*Borikas, supra*, 214 Cal.App.4th at p. 149.) [1]

B. Substantial Evidence Supporting the Method Selected and Allocation

Because the AAB employed a lawful valuation method, the AAB's *choice* of valuation method, and its *application* of that method to establish an allocation, are reviewed for substantial evidence in the administrative record. (See *County of Los Angeles v. Southern Cal. Edison Co.* (2003) 112 Cal.App.4th 1108 [value of real property is a question of fact, as is the selection and application of a legally valid appraisal method]; *Bret Harte Inn, supra,* 16 Cal.3d at p. 23 [trial court may overturn board's decision only when no substantial evidence supports it]; *Maples, supra,* 96 Cal.App.4th at p. 1013 [where taxpayer's claim is that a valid valuation method was improperly applied, the court is limited to reviewing the administrative record for substantial evidence].)

Here, the administrative record shows that both the Assessor and Holmes's expert used the comparable sales methodology to determine the proper allocation between land and improvements. Their dispute was not over the method, but over which comparable properties should be chosen. The AAB examined the evidence and concluded that the property was best characterized as a teardown, due to the way properties in the area were used and the manner in which Holmes's property was marketed. The AAB then weighed the analysis of Holmes's expert against the analysis of the Assessor's expert, and ultimately afforded some weight to Holmes's contention that the improvements had greater value than the Assessor had assigned. All of this was well within the AAB's discretion. (See *EHP Glendale, LLC v. County of Los Angeles* (2011) 193 Cal.App.4th 262, 276 ["Whether the testimony of one group of experts was more persuasive than the

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[1] To the extent Holmes contends the allocation methods treat him differently than those whose property values were allocated at a different time, he fails to establish an equal protection violation. (*Nordlinger, supra,* 505 U.S. at pp. 11–13 [acquisition value system established by Proposition 13 (Cal. Const., art. XIII, § A) did not violate equal protection even though newer and older property owners treated differently].)

expert opinion of another was an issue to be decided by the Board."].) Holmes fails to establish that the AAB's factual conclusions, selection and application of the valuation method, or determination of the allocation were unsupported by substantial evidence.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.

(A149873)